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VIRGINIA SECTION

ACCOUNTING BETWEEN COTENANTS—SECTION 3294 OF THE CODE OF 1887, GIVING RIGHT THEREFOR, OMITTED FROM CODE 1919—RESULT.—In the February issue of the VIRGINIA LAW REVIEW there appeared an article under the above title, noting the fact that § 3294 of the Code of 1887 had been omitted from the Code of 1919 by the revisors; and stating generally the probable effect of this omission.

But it has been called to our attention that subsequently an act was passed by the Legislature covering this omission.¹

We wish to correct this mistake herewith and acknowledge our error.

BANKRUPTCY—PREFERENTIAL TRANSFERS AND FRAUDULENT CONVEYANCES—WHAT CONSTITUTE.—It might be of interest to note that, even under the present Federal Bankruptcy Act, and our Virginia Statute of Fraudulent Conveyances, it is possible that a debtor may prefer by a transfer of his property one or several creditors to the exclusion of another, or all others, provided he has not the *actual* intent to hinder, delay, or defraud the others thereby; or further that the creditors who are thus preferred, have not *reasonable cause* to *believe* a preference is thereby being effected. In the first mentioned instance, *actual* fraud must be shown.

Thus in a recent Virginia case,¹ a debtor, at a time when he was insolvent, and when he knew he did not have the present ability to pay all his creditors, made a conveyance of some of his property to a creditor in satisfaction of a pre-existing debt. This transfer was made within the four months period of the filing of a petition in bankruptcy against him. The grantee, or transferee, however, did not know or have reasonable cause to believe he was being preferred. The court held, in accordance with the prevailing decisions on this point, that the conveyance could not be set aside.

In examining this question, and taking up the various grounds upon which this conveyance might have been avoided, it appears that it might have been set aside perhaps under § 60 (b) or § 67 (e) of the Bankruptcy Act, or as a fraudulent conveyance.

It is well settled and unquestioned in the case at bar that under our Statute of Fraudulent Conveyances, and at common law an insolvent debtor, known by himself to be insolvent at the time, may

¹ Acts 1920, p. 28, provides:

"An action of account may be maintained against the personal representative of any guardian, bailiff, or receiver, and also by one joint tenant, tenant in common, or coparcener, or his personal representative, against the other as bailiff, for receiving more than comes to his just share or proportion and against the personal representative of any such joint tenant or tenant in common."

¹ *Surratt v. Eskridge* (Va.), 108 S. E. 677 (1921).